

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK JACOBS,	:
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	:
Plaintiff,	:
	:
	:
v.	:
	:
	Civil Action No. 19-4615
CITY OF PHILADELPHIA, et al.,	:
	:
	:
Defendants.	:
	:

ORDER

AND NOW, this _____ day of _____, 2022, upon consideration of Defendant City of Philadelphia's Motion for Sanctions against Plaintiff, it is hereby **ORDERED** that the Motion is **GRANTED**, and this Court directs as follows:

1. Plaintiff shall provide full, complete, and verified responses, without objection, to the City's Requests for Production of Documents within five (5) days of the date of this Order;
2. If Plaintiff fails to comply with this Order within the time period provided, Plaintiff will be precluded from presenting any evidence or testimony at trial in this matter outside of any documents or records previously transmitted prior to the docketing of this Motion;
3. Plaintiff is ordered to pay Defendant City of Philadelphia \$250 for the costs associated with the filing of this Motion.

BY THE COURT:

Slomsky, J.

Discovery Deadline: August 8, 2022

CITY OF PHILADELPHIA LAW DEPARTMENT ATTORNEY FOR DEFENDANT
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ASSISTANT CITY SOLICITOR
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Plaintiff,	:
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v.	:
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CITY OF PHILADELPHIA, et al.,	:
	:
Defendants.	:
	:

**DEFENDANT CITY OF PHILADELPHIA'S MOTION FOR SANCTIONS FOR
PLAINTIFF'S FAILURE TO OBEY A COURT ORDER**

Defendant, City of Philadelphia (hereinafter “City”), by and through its undersigned counsel, files this Motion for Sanctions. In support of this Motion, Defendant avers as follows:

1. Defendant City of Philadelphia served Interrogatories and Requests for Production of Documents on Plaintiff on August 21, 2021.
2. On October 13, 2021, after Plaintiff failed to provide complete responses to Interrogatories and Requests for Production, Defendant City of Philadelphia sent Plaintiff pro se an email specifying the deficient and missing discovery responses.
3. On October 18, 2021, Plaintiff responded and indicated her would review his discovery responses and reply as soon as possible.

4. On October 25, 2021, City of Philadelphia emailed Plaintiff again inquiring about discovery response amendments, and Plaintiff responded with amended interrogatories, but failed to provide the responses to the Request for Production of Documents or associated documents and records.
5. On November 5, 2021, City of Philadelphia emailed Plaintiff again, requesting the production of the documents.
6. On March 7, 2022, City of Philadelphia sent a final discovery request to Plaintiff. Plaintiff did not respond or object to the requests made by Defendant.
7. Following Plaintiff's statements under oath and at a deposition on November 24, 2021, and court statements on January 11 and February 28, 2022, it became clear that Plaintiff possessed additional documents and records which he intends to rely upon in this case but failed to turn over to Defendant.
8. On March 21, 2022, Defendant City of Philadelphia submitted a Motion to Compel discovery responses from Plaintiff.
9. On April 3, 2022, Plaintiff provided a batch of emails and publicly available documents in an email to Defendant but failed to provide the responses to the Request for Production of Documents.
10. On June 10, 2022, this Court ordered Plaintiff to provide full, complete, and verified responses, without objection, to the City's Requests for Production of Documents. A true and correct copy of the Court's June 10, 2022, Order is attached hereto as Exhibit A.
11. The Order specified that Plaintiff was required to produce responses to the Request for Production of Documents in accordance with Defendant's Motion (ECF No. 54). A true and correct copy of Defendant's Motion to Compel is attached hereto as Exhibit B.

12. The Motion specified that Plaintiff was to produce responses to the Requests for Production of Documents within ten (10) days from the date of the Order.
13. Pursuant to the Court Order of June 10, 2022 and the Motion to Compel, Plaintiff's responses to Request for Production of Documents were due June 20, 2022.
14. To date, Plaintiff has not complied with this Court's June 10, 2022 Order and are now significantly overdue.
15. Defendant City of Philadelphia requires the responses to the Request for Production of Documents to properly defend this case and prepare for trial.
16. Federal Rule of Civil Procedure 37 provides that the Court may, on motion, make an Order for Sanctions when a party fails to comply with a court order, including a court order granting a Motion to Compel Requests for Production.
17. Federal Rule of Civil Procedure 37(c)(1) states that when a party fails to amend a prior discovery request as required by Rule 26(e), they are precluded from using that information as evidence at trial.
18. Plaintiff has articulated no reason why he has failed to comply with the Order.
19. Federal Rule of Civil Procedure 37(c)(1)(A) provides that a court may additionally order a party that, without substantial justification, fails to amend a prior discovery request to pay reasonable expenses caused by the failure.

WHEREFORE, Defendant City of Philadelphia respectfully requests that this Court enter an Order requiring Plaintiff to provide full, complete, and verified responses, without objection, to the City's Requests for Production of Documents within five (5) days, and to pay sanctions in the amount of \$250, or suffer harsher sanctions upon application to this Court, including the possibility of preclusion of evidence at trial

Respectfully Submitted,

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

Date: July 13, 2022

BY: s/ Michael J. Sheehan
Michael J. Sheehan
Assistant City Solicitor

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 26.1(f)

On August 21, 2021, the undersigned counsel transmitted Defendant the City of Philadelphia's First Set of Interrogatories and Requests for Production of documents to counsel for Plaintiff Derrick Jacobs.

On October 13, 2021, counsel for Defendant inquired via email as to the status of Plaintiff's missing and deficient responses to Defendant's discovery requests. On October 25, 2021, counsel for Defendant again requested the complete discovery responses. On November 5, 2021, counsel for Defendant sent a third request for the full discovery responses, again identifying all the non-responsive and/or missing answers to interrogatories and responses to request for production of documents.

Plaintiff indicated at his deposition on November 24, 2021, and in court on January 11 and February 28, 2022, that he would provide documents in his possession to Defendant. However, On March 7, 2022, counsel for Defendant sent Plaintiff an email with an attached letter stating that if the responses were not provided, Defendant would file the Motion to Compel on March 14, 2022. Plaintiff failed to provide full discovery responses and the Motion to Compel was filed on 21, 2022 and, instead merely sent a batch of documents. Following the June 10, 2022, Order, Plaintiff has failed to comply or provide the required responses to the Requests for Production of Documents.

Therefore, I hereby certify that, after reasonable effort, counsel and Plaintiff have been unable to resolve this discovery dispute.

/s/ Michael J. Sheehan

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CITY OF PHILADELPHIA, et al.,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the foregoing Motion for Sanctions for Plaintiff's Failure to Obey a Court Order was filed electronically and is available for viewing and downloading.

Respectfully Submitted,

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

Date: July 13, 2022

BY: s/ Michael J. Sheehan
Michael J. Sheehan
Assistant City Solicitor